

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

KEVIN MILLER

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Criminal No. JFM-06-0478

Civil No. – JFM-11-771

**MEMORANDUM**

Kevin Miller has filed this motion under 28 U.S.C. §2255 alleging that his counsel was ineffective in three respects. The motion will be denied.

First, Miller contends that his counsel was ineffective in not moving for a mistrial on the ground that this court erroneously did not strike a field test conducted by an arresting officer showing that the substance in question was heroin. In fact, the court struck the officer's testimony about what the alleged substance was because the officer was not a chemist. If, in fact, this court failed to strike the exhibit itself, it was erroneous. However, any error was entirely harmless because, as this court noted at the time, this was not a case involving a hand to hand buy in which the proof of the nature of the substance distributed would have been critical. Rather, defendant was convicted of conspiracy to distribute and possess with intent to distribute heroin, and the fact that heroin was involved in the conspiracy (and was possessed by a defendant in furtherance of the conspiracy) was established by the several cooperators who testified that they – and Miller – were involved in distributing heroin.

Second, Miller contests this court's finding that he was a career offender. There is no basis for that finding. Miller was a career offender. It is also to be noted that this court sentenced Miller to 262 months imprisonment, which was substantially less than the low end of

the Sentencing Guideline range (360 months) to which Miller was subject as a career offender.

Third, Miller complains that his counsel filed an “Anders” brief in the Fourth Circuit. However, the claims raised by Miller on appeal were frivolous, and the brief filed by counsel was entirely appropriate.

A separate order denying Miller’s motion is being entered herewith.

Date: July 20, 2011

/s/  
J. Frederick Motz  
United States District Judge